

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Lieu/Jones Analyst: Jennifer Bettencourt Bill Number: AB 650

Related Bills: See Legislative History Telephone: 845-5163 Introduced Date: February 21, 2007

Attorney: Tommy Leung Sponsor: _____

SUBJECT: FTB Notify Taxpayers Of Federal Earned Income Credit

SUMMARY

This bill would require the Franchise Tax Board (FTB) to notify eligible taxpayers of the availability of the federal earned income tax credit (EITC).

PURPOSE OF THE BILL

According to the author's office, the purpose of the bill is to ensure that eligible Californians receive their share of the federal money that is available through the EITC program.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative January 1, 2008.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Existing federal law allows a refundable income tax credit for low-income working individuals and families, known as the EITC. This credit reduces the amount of federal tax owed and can result in a refund if the EITC exceeds the amount of the tax liability.

The amount of the EITC is prorated based on income and begins to phase out at certain income levels. For the 2006 tax year, the adjusted gross income (AGI) must be less than:

- \$36,348 with more than one qualifying child, or \$38,348 for married filing jointly;
- \$32,001 with one qualifying child, or \$34,001 for married filing jointly; or
- \$12,120 without a qualifying child or \$14,120 if married filing jointly.

For tax year 2006, the maximum credit allowed is:

- \$4,536 with two or more qualifying children;
- \$2,747 with one qualifying child;
- \$412 with no qualifying children.

Board Position:

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Department Director

Date

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4/3/07

Existing federal law allows an eligible individual to receive advance payment of the EITC by providing their employer with a Form W-5 (Earned Income Credit Advance Payment Certificate). The EITC advance payment allows those taxpayers who expect to qualify for the credit and have at least one qualifying child to receive part of the credit in each paycheck during the year the taxpayer qualifies for the credit. The maximum advance EITC the employer is allowed to provide for taxable year 2006 is \$1,648.

Through its Stakeholder Partnerships, Education, and Communication organization, the IRS currently provides EITC information with utility bills, school report cards, Forms W-2 (Wage and Tax Statement), Forms 1099 (payment reporting for various sources), and company newsletters; through direct mailings by housing authorities and social service agencies; and through advertising, workshops, seminars, and neighborhood outreach.

Existing state law does not provide an EITC.

THIS BILL

This bill would require FTB to notify taxpayers who may qualify for the federal EITC, by sending a notice to the taxpayer's last known address.

The bill would specify that "earned income tax credit" means the earned federal income tax credit as defined by Section 32 of the Internal Revenue Code.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

- This bill would require the department to notify "any taxpayer" who may qualify for the EITC, which would require FTB to notify only those individuals who pay taxes to California. Many individuals eligible for the federal EITC do not file a California income tax return because they do not meet the minimum filing requirement, and therefore would not be considered a "taxpayer." The author may wish to amend this bill to change "any taxpayer" to any individual who earns wages, or who has a filing requirement in California.
- This bill fails to specify the criteria for determining "who may qualify" for the EITC. It is recommended that criteria be added to the bill to specify what type of financial data to use, such as income tax returns, W-2s, or 1099s.
- This bill fails to specify when and how often the department must send notification to taxpayers regarding their EITC eligibility. Because the IRS provides a three year period for taxpayers to file a claim for the EITC, it is unclear whether the author intends for the department to notify taxpayers for past years in which the taxpayer was eligible for the credit and can still file a claim, or only the current year. Without clarification, this bill could be interpreted to require the department to notify taxpayers only one time, without regard to all years for which the taxpayer may be eligible, which may be contrary to the author's intent.

LEGISLATIVE HISTORY

AB 21 (Jones, 2007/2008) would allow a refundable Earned Income Credit (EIC) equal to 15% of the federal EIC. AB 21 is set for hearing with the Assembly Revenue and Taxation Committee.

AB 2813 (Nunez, 2003/2004) and AB 1370 (Wesson, 1999/2000) would have required employers to notify their employees about the Federal Earned Income Tax. AB 2813 was vetoed by Governor Schwarzenegger, stating, "...it is duplicative of federal efforts to notify employees that may be eligible for the federal earned income credit. AB 1370 was vetoed by Governor Davis stating, "...because the EITC is a federal program, the responsibility of educating taxpayers about it should fall on the federal government.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Illinois requires an employer to notify qualifying employees, whose gross wages are less than the maximum amount required for EITC, that they may be eligible for the program.

Florida does not have a personal income tax. *Massachusetts, Michigan, Minnesota, and New York* do not have a requirement to notify taxpayers who may qualify for the federal EITC.

FISCAL IMPACT

The department's costs to administer this bill will be determined when the implementation considerations have been resolved, but could be significant if the department is required to identify any taxpayer who may qualify for the federal EITC.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

LEGISLATIVE STAFF CONTACT

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